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Supreme Court, U.S.
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NO. 95-501

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1995

CHAN U. YI, Petitioner

VS.

THE STATE OF TEXAS, Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF THE STATE OF TEXAS

PETITION FOR WRIT OF CERTIORARI

FLOYD W. FREED, III
2301 FM 1960 West, Suite 203
Houston, Texas 77068
Phone: (713) 444-0871
Fax: (713) 444-0892
State Bar No. 07413500
Attorney for Petitioner

QUESTION PRESENTED FOR REVIEW

Whether the trial court denied Petitioner his 14th Amendment right of due process according to the United States Constitution, when the trial court did not admonish the Petitioner, prior to accepting his plea of guilty, that Petitioner was ineligible for probation when the trial court knew Petitioner's plea was conditioned in whole or in part on the belief that the trial court would consider probation as a sentencing alternative.

NAMES OF ALL PARTIES

Pursuant to Rule 14.1(b) of the Rules of the Supreme Court, the names of all parties are provided below:

Attorneys for the State of Texas:

JOHN B. HOLMES, JR.
District Attorney of Harris County
201 Fannin, Suite 200
Houston, Texas 77002

CALVIN A. HARTMAN
Assistant District Attorney of Harris County
Appellate Division
201 Fannin, Suite 200
Houston, Texas 77002

Petitioner:

CHAN U. YI

Respondent:

THE STATE OF TEXAS

Counsel for Petitioner:

FLOYD W. FREED, III
2301 FM 1960 West, Suite 203
Houston, Texas 77068
Phone: (713) 444-0871
Fax: (713) 444-0892
State Bar No. 07413500

TABLE OF CONTENTS

Page

QUESTION PRESENTED FOR REVIEW i

NAMES OF ALL PARTIES ii

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES v

OPINIONS BELOW 2

JURISDICTION 2

CONSTITUTIONAL PROVISION 3

STATEMENT OF CASE 4

REASONS FOR GRANTING WRIT 5

CONCLUSION 9

APPENDIX A 10

Judgment and Opinion of the Fourteenth Court of Appeals, August 18, 1994 11

Ruling of the Fourteenth Court of Appeals, September 15, 1994 17

Judgment of the Court of Criminal Appeals, December 7, 1994 19

TABLE OF CONTENTS - Continued

Page

Judgment of the Court of Criminal Appeals, June 28, 1995 20

XIV Amendment of the United States Constitution 21

TABLE OF AUTHORITIES

CASES — Page

Boykin v. Alabama, 395 U.S. 238, 23 L.Ed.2d 274, 89 S.Ct. 1709 (1969) 5, 6

Ex parte Williams, 704 S.W.2d 773, 775 (Tex.Crim.App. 1986) 7, 15

Goodie v. State, 735 S.W.2d 871, 873 (Tex.App.- Houston [14th Dist.] 1987, pet. ref'd 745 S.W.2d 379 (Tex.Crim.App. 1988)) 15

Holland v. State, 761 S.W.2d 307, 320 (Tex.Crim.App. 1988) 15

Jones v. State, 855 S.W.2d 82, 84 (Tex.App.- Houston [14th Dist.] 1993, pet. ref'd) 15

STATUTES, CODES, AND RULES

Health and Safety Code of Texas

Section 481.112(F) 5

Texas Rules of Criminal Procedure

Article 26.13 . . . . . 7, 13, 16

Article 42.12, Section 3(e)(1) 5, 6

TABLE OF AUTHORITIES - Continued

Page

United States Code

Title 28, Section 1257(a) 3

Rules of the Supreme Court

Rule 10.1(b) 3

Rule 14.1(b) ii

Rule 29.5(b) 18

UNITED STATES CONSTITUTION

14th Amendment . . . . . i, 3, 5, 9, 21, 22

NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1995

CHAN U. YI, Petitioner

VS.

THE STATE OF TEXAS, Respondent

PETITION FOR A WRIT OF CERTIORARI TO
THE COURT OF CRIMINAL APPEALS OF
THE STATE OF TEXAS

To the Honorable Chief Justice and Associate Judges of the Supreme Court of the United States:

CHAN U. YI, the Petitioner herein, prays that a Writ of Certiorari issue to review the judgment of the Court of Criminal Appeals of Texas, entered in the above entitled case on June 28, 1995.

OPINIONS BELOW

The unpublished and judgment and opinion of the Fourteenth Court of Appeals of the State of Texas is printed in Appendix A, at page 11.

The ruling of the Fourteenth Court of Appeals of the State of Texas is printed in Appendix A, at page 17.

The judgment of the Court of Criminal Appeals of the State of Texas, refusing Appellant's Petition for Discretionary Review, is printed in Appendix A, at page 19.

The judgment of the Court of Criminal Appeals of the State of Texas, denying Appellant's Motion for Rehearing, is printed in Appendix A, at page 20.

JURISDICTION

The judgment of the Fourteenth Court of Appeals of the State of Texas was entered affirming Petitioner's conviction in the 209th Judicial District Court of Harris County, Texas on August 18, 1994. Petitioner's Motion for

Rehearing was overruled on September 15, 1994.

Petitioner timely filed a Petition for Discretionary Review to the Court of Criminal Appeals of the State of Texas, which was refused on December 7, 1994.

Petitioner timely filed a Motion for Rehearing Following the Denial of Appellant's Petition for Discretionary Review, which was denied on June 28, 1995.

The jurisdiction of the Court is invoked under Title 28 U.S.C. Section 1257(a) and pursuant to the Rules of the Supreme Court, i.e., Rule 10.1(b), in that the opinion rendered by the Fourteenth Court of Appeals of the State of Texas and affirmed by the Court of Criminal Appeals of the State of Texas is in conflict with the decisions of the Supreme Court of the United States.

CONSTITUTIONAL PROVISION

XIV Amendment to the United States Constitution.

STATEMENT OF THE CASE

Petitioner was indicted on December 3, 1991 for the felony offense of Aggravated Delivery of a Controlled Substance, namely cocaine, weighing at least 400 grams, alleged to have occurred on or about November 4, 1991. On July 20, 1993, Petitioner entered a plea of guilty to the first paragraph of the indictment. Petitioner filed a written application for probation. The State of Texas did not make an agreed punishment recommendation. The trial court ordered the preparation of a Pre-Sentence Investigation Report. A punishment hearing was held on December 6, 1993. The trial court found Petitioner guilty of Aggravated Delivery of a Controlled Substance, namely cocaine, weighing at least 400 grams, and assessed his punishment at the minimum available punishment of fifteen (15) years confinement in the Texas Department of Criminal Justice, Institutional Division, and a $1,000.00 fine. Written notice of appeal was given on December 14, 1993 and an appeal

bond was posted by the Petitioner.

Petitioner first raised his denial of due process of law, pursuant to the 14th Amendment to the United States Constitution, before the Fourteenth Court of Appeals of the State of Texas, by addressing said Court of Appeals to the opinion of *Boykin v. Alabama,* 395 U.S. 238, 23 L.Ed.2d 274, 89 S.Ct. 1709 (1969), in his sole Point of Error.

REASONS FOR GRANTING WRIT

The Petitioner, CHAN U. YI, entered his plea of guilty to the offense of Aggravated Delivery of a Controlled Substance, namely cocaine, weighing at least 400 grams, Section 481.112(F) Health and Safety Code of Texas, with the expectation that the trial court would be able to consider probation as a sentencing alternative. Due to the amount of cocaine alleged in the indictment and the plea thereto by the Petitioner, the trial court could not consider probation. Article 42.12, Section 3(e)(1) of the Texas Rules of Criminal

Procedure states that "a defendant is not eligible for probation under this section if the defendant: (1) is sentenced to a term of imprisonment that exceeds ten (10) years..."

The trial court was aware that the Petitioner had filed a written application for probation prior to his plea of guilty. However, the trial court did not admonish or inform the Petitioner that he was ineligible for probation, either orally or in writing, before accepting his plea of guilty.

Petitioner has consistently raised the involuntary nature of his plea of guilty since his appellant's brief to the Fourteenth Court of Appeals of the State of Texas.

In *Boykin v. Alabama,* 395 U.S. 238, 23 L.Ed.2d 274, 89 S.Ct. 1709 (1969), this Honorable Court stated:

> For, as we have said, a plea of guilty is more than an admission of conduct; it is a conviction. Ignorance, incomprehension, coercion, terror, inducements, subtle or blatant threats, might be a perfect cover up of unconstitutionality.

The Petitioner gave up valuable constitutional rights

by his plea of guilty. A plea of guilty should represent a voluntary and intelligent choice among differing options available to a defendant.

Article 26.13 of the Texas Code of Criminal Procedure (Vernon's 1989), sets forth basic admonishments for the trial court to enter a plea of guilty and requires substantial compliance therewith. The opinion of the Fourteenth Court of Appeals of the State of Texas reasons that the court is not under a duty to advise a defendant that he is ineligible for probation. See *Ex parte Williams,* 704 S.W.2d 773, 775 (Tex.Crim.App. 1986). Further, the opinion places the burden upon the Petitioner to demonstrate that he was not aware of the consequences of his plea and that he was misled or harmed by the court's admonishment. In applying the facts, the opinion finds that the Petitioner did not show he was misled because the court advised the Petitioner the minimum punishment was fifteen (15) years. This is the very fact which deprives the Petitioner of due

process guaranteed by the 14th Amendment to the United States Constitution, in that the trial court knew the Petitioner was seeking probation and that the Petitioner was ineligible as a matter of law. Clearly, such a blatant mistake required the trial court to specifically advise the Petitioner he was not eligible for probation and offer to permit the Petitioner to withdraw his plea of guilty. Failure to do so by the trial court denied the Petitioner valuable constitutional rights, which necessitate the reversal of the Petitioner's conviction herein.

CONCLUSION

For the above and foregoing reasons, this Petition for Writ of Certiorari should be granted.

Dated: September 22, 1995.

Respectfully submitted,

FLOYD W. FREED, III
2301 FM 1960 West, Suite 203
Houston, Texas 77068
Phone: (713) 444-0871
Fax: (713) 444-0892
State Bar No.: 07413500
Attorney for Petitioner

APPENDIX A

AUGUST 18, 1994.

JUDGMENT

THE FOURTEENTH COURT OF APPEALS

THE STATE OF TEXAS

CHAN U. YI, APPELLANT

NO. A14-93-01126-CR V.

THE STATE OF TEXAS, APPELLEE

This cause came on to be heard on the transcript of the record of the court below. The same being considered, it is the opinion of this Court that there was no error in the judgment. It is ordered by the Court that the judgment be in all things **AFFIRMED**, and that the appellant pay all costs in this behalf expended, and that this decision be certified below for observance.

Affirmed and Opinion filed August 18, 1994.

IN THE

FOURTEENTH COURT OF APPEALS

THE STATE OF TEXAS

NO. A14-93-01126-CR

CHAN U. YI, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 209th District Court
Harris County, Texas
Trial Court Cause No. 614,539

OPINION

Appellant entered a plea of guilty to the offense of possession of over 400 grams of cocaine with intent to

deliver. He was convicted and the court assessed punishment at fifteen years in prison. In a single point of error, appellant claims the trial court erred in accepting his involuntary guilty plea. We affirm.

Appellant signed a document entitled, Waiver of Constitutional Rights, Agreement to Stipulate, and Judicial Confession. The form stated that appellant committed the offense, consented to the stipulation of evidence, had discussed the case with his attorney and was satisfied with his representation. Appellant's attorney signed the waiver stating, "I represent the defendant in this case and I believe that this document was executed by him knowingly and voluntarily and after I fully discussed it and its consequences with him." Appellant also signed written admonishments pursuant to article 26.13 of the Code of Criminal Procedure. The admonishments included the range of punishment, possible fine, possible deportation, the right to a presentence investigation report, the effect of deferred adjudication, and

other rights appellant waived by pleading guilty. Appellant further indicated he had consulted with his attorney, understood the consequences of his plea, had received no promises of leniency from his attorney, the State or any other person, and had freely, knowingly, and voluntarily executed the stipulation of evidence.

At the plea proceeding, the trial court asked appellant if he was pleading guilty because he was guilty and for no other reason, whether he was pleading guilty of his own free will, and whether his counsel had answered all of his questions. Appellant answered yes to all the trial court's inquiries. The trial court repeated several of the admonishments found on the written form appellant had signed earlier. The trial court admonished appellant that the range of punishment was fifteen to ninety-nine years or life and a fine not to exceed $250,000.

At the sentencing hearing, appellant's attorney argued that appellant should be given deferred adjudication. The

trial court disagreed and sentenced appellant to fifteen years.

The trial court should not accept a guilty plea unless it appears the plea is voluntary. *Holland v. State,* 761 S.W.2d 307, 320 (Tex.Crim.App. 1988). In determining whether a plea is voluntary, the court should consider all the facts and circumstances. *Goodie v. State,* 735 S.W.2d 871, 873 (Tex.App.- Houston [14th Dist.] 1987, pet. ref'd (745 S.W.2d 379 (Tex.Crim.App. 1988)). Appellant bears the burden to show his plea was involuntary and that burden is a heavy one. *Jones v. State,* 855 S.W.2d 82, 84 (Tex.App.- Houston [14th Dist.] 1993, pet. ref'd).

Appellant claims the trial court failed to admonish him that he was ineligible for court ordered probation or jury probation. The court, however, is not under a duty to advise a defendant that he is ineligible for probation. *See, Ex parte Williams,* 704 S.W.2d 773, 775 (Tex.Crim.App. 1986). Substantial compliance by the court is insufficient unless the defendant shows he was not aware of the consequences of his

plea and that he was misled or harmed by the court's admonishment. *Id.*; Tex. Code Crim. Proc. Ann. art. 26.13(c).

Appellant has failed to show he was misled by the court's admonishments. Appellant signed a form stating he would not be eligible for probation if the punishment exceeded ten years. Further, the trial court admonished appellant that the range of punishment for his offense started at a minimum of fifteen years. Appellant's single point of error is overruled.

The judgment of the trial court is affirmed.

/s/ J. Curtiss Brown
Chief Justice

Judgment rendered and Opinion filed August 18, 1994.

Panel consists of Chief Justice J. Curtiss Brown, and Justices Murphy and Ellis.

Do not publish - Tex. R. App. P. 90.

September 15, 1994

Hon. Phillip S. Greene
2510 Montrose
Houston, Texas 77006

Hon. Paul Hilbert
2301 FM 1960 West
Suite 203
Houston, Texas 77068

Hon. John B. Holmes, Jr.
District Attorney
Harris County
201 Fannin
Houston, Texas 77002

RE: Case No. 14-93-01126-CR
Trial Court Case No. 614539

STYLE: Yi, Chan U.
V: The State of Texas

Counsel:

Please be advised that, on this date, the Court OVERRULED appellant's motion for rehearing in the above cause.

MARY JANE SMART, CLERK

By: Charlene Mitchell
Chief Deputy

Judge, 209th District Court
301 San Jacinto
7th Floor
Houston, Texas 77002

Court Reporter
209th District Court
301 San Jacinto, 4th Floor
Houston, Texas 77002

Hon. Katherine Tyra
District Clerk, Harris County
Attention: Criminal Division
P.O. Box 4651
Houston, Texas 77210

Official Notice
Court of Criminal Appeals

December 7, 1995

RE: Case No. 1197-94
Trial Court Case No. 14-93-01126-CR

STYLE: YI, CHAN U.

On this day, the Appellant's Petition for Discretionary Review has been REFUSED.

Thomas Lowe, Clerk

Court of Criminal Appeals
P.O. Box 12308, Capitol Station
Austin, Texas 78711

Mail to: PAUL J. HILBERT
2301 FM 1960 WEST
SUITE 203
HOUSTON, TX 77068

Official Notice
Court of Criminal Appeals

June 28, 1995

COA# 14-93-01126-CR
RE: Case No. 1197-94
STYLE: YI, CHAN U.

On this day the Appellant's Motion for Rehearing was denied.

Thomas Lowe. Clerk

Court of Criminal Appeals
P.O. Box 12308, Capitol Station
Austin, Texas 78711

Mail to: PAUL J. HILBERT
2301 FM 1960 WEST
SUITE 203
HOUSTON, TX 77068

AMENDMENT XIV - CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPORTIONMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICER; PUBLIC DEBT; ENFORCEMENT

Materials for the Due Process Clause of Section 1 are set out in this volume and the following volume. See preceding volume for materials pertaining to the Citizenship and Privileges and Immunities Clauses of that section and the volume containing the end of the Constitution for materials pertaining to the Equal Protection Clause of that section and Sections 2 to 5.

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; not deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the

proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United Stated, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations, and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.